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The Telecom Regulatory Authority of India Act, 1997 (Central Act 24 of 1997), which has been passed by Parliament and assented to by President of India on 28th March, 1997 and published in the Gazette of India, Extraordinary, Part II, Section I dated 29th March, 1997 is hereby published for the general information of the public.

P. V. Kadnekar, Joint Secretary (Law).

Panaji, 24th September 1997.

THE TELECOM REGULATORY AUTHORITY OF INDIA ACT, 1997

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THE TELECOM REGULATORY AUTHORITY
OF INDIA ACT, 1997

AN

ACT

to provide for the establishment of the Telecom Regulatory Authority of India to regulate the telecommunication services, and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Forty-eighth Year of the Republic of India as follows:

CHAPTER I

Preliminary

1. *Short title, extent and commencement.*— (1) This Act may be called the Telecom Regulatory Authority of India Act, 1997.

(2) It extends to the whole of India.

(3) It shall be deemed to have come into force on the 25th day of January, 1997.

2. *Definitions.*— (1) In this Act, unless the context otherwise requires,—

(a) “appointed day” means the date with effect from which the Authority is established under sub-section (1) of section 3;

(b) “Authority” means the Telecom Regulatory Authority of India established under sub-section (1) of section 3;

(c) “Chairperson” means the Chairperson of the Authority appointed under sub-section (3) of section 3;

(d) “Fund” means the Fund constituted under sub-section (1) of section 22;

(e) “Licensee” means any person licensed under sub-section (1) of section 4 of the Indian Telegraph Act, 1885 for providing specified public telecommunication services; 13 of 1885.

(f) “member” means a member of the Authority appointed under sub-section (3) of section 3 and includes the Chairperson and the Vice-Chairperson;

(g) “notification” means a notification published in the Official Gazette;

(h) “prescribed” means prescribed by rules made under this Act;

(i) “regulations” means regulations made by the Authority under this Act;

(j) “service provider” means the Government and includes a licensee;

(k) “telecommunication service” means service of any description (including electronic mail, voice mail, data services, audio tex services, video tex services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electromagnetic means but shall not include broadcasting services.

(2) Words and expressions used and not defined in this Act but defined in the Indian Telegraph Act, 1885 or the Indian Wireless Telegraphy Act, 1933, shall have the meanings respectively assigned to them in those Acts.

(3) Any reference in this Act to a law which is not in force in the State of Jammu and Kashmir shall in relation to that State be construed as a reference to the corresponding law, if any, in that State.

CHAPTER II

Telecom Regulatory Authority of India

3. *Establishment and incorporation of Authority.*— (1) With effect from such date as the Central Government may, by notification appoint, there shall be established, for the purposes of this Act, an Authority to be called the Telecom Regulatory Authority of India.

(2) The Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

(3) The Authority shall consist of a Chairperson, and not less than two, but not exceeding six members, to be appointed by the Central Government.

(4) The head office of the Authority shall be at New Delhi.

4. *Qualifications for appointment of Chairperson and other members.*— (1) The Chairperson shall be a person who is or has been a Judge of the Supreme Court or who is or has been the Chief Justice of a High Court.

(2) A member shall be a person who has special knowledge of, and professional experience in, telecommunication, industry, finance, accountancy, law, management and consumer affairs:

Provided that a person who is or has been in the service of Government shall not be appointed as a member unless such person has held the post of Secretary or Additional Secretary, or the post of Additional Secretary and Secretary to the Government of India or any equivalent post in the Central Government or the State Government for a period of three years.

5. Term of office, conditions of service, etc. of Chairperson and other members.— (1) Before appointing any person as the Chairperson or member, the Central Government shall satisfy itself that the person does not have any such financial or other interest as is likely to affect prejudicially his functions as such member.

(2) The Chairperson shall hold office for a term of five years from the date on which he enters upon his office.

(3) A member shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier.

(4) The employee of the Government on his selection as member shall have to retire from service before joining as a member.

(5) The salary and allowances payable to and the other terms and conditions of service of the Chairperson and other members shall be such as may be prescribed.

(6) The salary, allowances and other conditions of service of the Chairperson or of a member shall not be varied to his disadvantage after appointment.

(7) Notwithstanding anything contained in sub-section (2) or sub-section (3), a member may —

(a) relinquish his office by giving in writing to the Central Government notice of not less than three months; or

(b) be removed from his office in accordance with the provisions of section 7.

(8) The Chairperson or any other member ceasing to hold office as such, shall —

(a) be ineligible for further employment under the Central Government or any State Government; or

(b) not accept any commercial employment, for a period of two years from the date he ceases to hold such office.

(9) A vacancy caused to the office of the Chairperson or any other member shall be filled up within a period of three months from the date on which such vacancy occurs.

Explanation:— For the purposes of this section, “commercial employment” means employment in any capacity under, or agency of, a person engaged in trading, commercial, industrial or financial business in any field and includes also a director of a company or partner of a firm and it also includes setting up practice either independently or as partner of a firm or as an adviser or a consultant.

6. Powers of Chairperson and Vice-Chairperson.— (1) The Chairperson shall have powers of general superintendence and directions in the conduct of the affairs of the Authority and he shall, in addition to presiding over the meetings of the Authority, exercise and discharge such powers and functions of the Authority and shall discharge such other powers and functions as may be prescribed.

(2) The Central Government may appoint one of the members to be a Vice-Chairperson of the Authority who shall exercise and discharge such powers and functions of the Chairperson as may be prescribed or as may be delegated to him by the Authority.

7. Removal and suspension of member from office in certain circumstances.— (1) The Central Government may remove from office any member, who,—

(a) has been adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(c) has become physically or mentally incapable of acting as a member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a member; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest.

(2) Notwithstanding anything contained in sub-section (1), no member shall be removed from his office on the ground specified in clause (d) or clause (e) of that sub-section unless the Supreme Court on a reference being made to it in this behalf by the Central Government, has, on an enquiry, held by it in accordance with such procedure as prescribed in this behalf, reported that the member ought on such ground or grounds to be removed.

(3) The Central Government may suspend from office a member in respect of whom a reference has been made to the Supreme Court under sub-section (2) until the Central Government has passed an order on receipt of the report of the Supreme Court on such reference.

8. Meetings.— (1) The Authority shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be provided by regulations.

(2) The Chairperson or, if for any reason, he is unable to attend a meeting of the Authority, Vice-Chairperson and in his absence, any other member chosen by the members present from amongst themselves at the meeting shall preside at the meeting.

(3) All questions which come up before any meeting of the Authority shall be decided by a majority vote of the members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding, shall have a second or casting vote.

(4) The Authority may make regulations for the transaction of business at its meetings.

9. *Vacancies, etc., not to invalidate proceedings of Authority.*— No act or proceeding of the Authority shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Authority; or

(b) any defect in the appointment of a person acting as a member of the Authority; or

(c) any irregularity in the procedure of the Authority not affecting the merits of the case.

10. *Officers and other employees of Authority.*— (1) The Authority may appoint officers and such other employees as it considers necessary for the efficient discharge of its functions under this Act.

(2) The salary and allowances payable to and the other conditions of service of the officers and other employees of the Authority appointed under sub-section (1) shall be such as may be determined by regulations.

CHAPTER III

Powers and Functions of the Authority

11. *Functions of Authority.* — (1) Notwithstanding anything contained in the Indian Telegraph Act, 1885, the functions of the Authority shall be to— 13 of 1885.

(a) recommend the need and timing for introduction of new service provider;

(b) recommend the terms and conditions of licence to a service provider;

(c) ensure technical compatibility and effective inter-connection between different service providers;

(d) regulate arrangement amongst service providers of sharing their revenue derived from providing telecommunication services;

(e) ensure compliance of terms and conditions of licence;

(f) recommend revocation of licence for non-compliance of terms and conditions of licence;

(g) lay down and ensure the time period for providing local and long distance circuits of telecommunication between different service providers;

(h) facilitate competition and promote efficiency in the operation of telecommunication services so as to facilitate growth in such services;

(i) protect the interest of the consumers of telecommunication service;

(j) monitor the quality of service and conduct the periodical survey of such service provided by the service providers;

(k) inspect the equipment used in the network and recommend the type of equipment to be used by the service providers;

(l) maintain register of interconnect agreements and of all such other matters as may be provided in the regulations;

(m) keep register maintained under clause (l) open for inspection to any member of public on payment of such fee and compliance of such other requirements as may be provided in the regulations;

(n) settle disputes between service providers;

(o) render advice to the Central Government in the matters relating to the development of telecommunication technology and any other matter relatable to telecommunication industry in general;

(p) levy fees and other charges at such rates and in respect of such services as may be determined by regulations;

(q) ensure effective compliance of universal service obligations;

(r) perform such other functions including such administrative and financial functions as may be entrusted to it by the Central Government or as may be necessary to carry out the provisions of this Act.

(2) Notwithstanding anything contained in the Indian Telegraph Act, 1885, the Authority may, from 13 of 1885, time to time, by order, notify in the Official Gazette the rates at which the telecommunication services within India and outside India shall be provided under this Act including the rates at which messages shall be transmitted to any country outside India:

Provided that the Authority may notify different rates for different persons or class of persons for similar telecommunication services and where different rates are fixed as aforesaid the Authority shall record the reasons therefor.

(3) While discharging its functions under sub-section (1), the Authority shall not act against the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality.

(4) The Authority shall ensure transparency while exercising its powers and discharging its functions.

12. *Powers of Authority to call for information, conduct investigations, etc.*— (1) Where the Authority considers it expedient so to do, it may, by order in writing,—

(a) call upon any service provider at any time to furnish in writing such information or explanation relating to its affairs as the Authority may require; or

(b) appoint one or more persons to make an inquiry in relation to the affairs of any service provider; and

(c) direct any of its officers or employees to inspect the books of account or other documents of any service provider.

(2) Where any inquiry in relation to the affairs of a service provider has been undertaken under sub-section (1),—

(a) every officer of the Government Department, if such service provider is a department of the Government;

(b) every director, manager, secretary or other officer, if such service provider is a company; or

(c) every partner, manager, secretary or other officer, if such service provider is a firm; or

(d) every other person or body of persons who has had dealings in the course of business with any of the persons mentioned in clauses (b) and (c),

shall be bound to produce before the Authority making the inquiry, all such books of account or other documents in his custody or power relating to, or having a bearing on the subject-matter of such inquiry and also to furnish to the Authority with any such statement or information relating thereto, as the case may be, required of him, within such time as may be specified.

(3) Every service provider shall maintain such books of account or other documents as may be prescribed.

(4) The Authority shall have the power to issue such directions to service providers as it may consider necessary for proper functioning by service providers.

13. *Power of Authority to issue directions.*— The Authority may, for the discharge of its functions under sub-sections (1) of section 11, issue such directions from time to time to the service providers, as it may consider necessary.

CHAPTER IV

Settlement of Disputes

14. *Authority to settle disputes.*— (1) If a dispute arises, in respect of matters referred to in sub-section (2), among service providers or between service providers and a group of consumers, such disputes shall be adjudicated by a bench constituted by the Chairperson and such bench shall consist of two members:

Provided that if the members of the bench differ on any point or points they shall state the point or points on which

they differ and refer the same to a third member for hearing on such point or points and such point or points shall be decided according to the opinion of that member.

(2) The bench constituted under sub-section (1) shall exercise, on and from the appointed day all such jurisdiction, powers and authority as were exercisable immediately before that date by any civil court on any matter relating to—

(i) technical compatibility and inter-connections between service providers;

(ii) revenue sharing arrangements between different service providers;

(iii) quality of telecommunication services and interest of consumers:

Provided that nothing in this sub-section shall apply in respect of matters relating to—

(a) the monopolistic trade practice, restrictive trade practice and unfair trade practice which are subject to the jurisdiction of the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of section 5 of the Monopolies and Restrictive Trade Practices Act, 1969; 54 of 1969.

(b) the complaint of an individual consumer maintainable before a Consumer Disputes Redressal Forum or a Consumer Disputes Commission or the National Consumer Redressal Commission established under section 9 of the Consumer Protection Act, 1986; 68 of 1986.

(c) dispute between telegraph authority and any other person referred to in sub-section (1) of section 7B of the Indian Telegraph Act, 1885. 13 of 1885.

15. *Filing of application to Authority and procedure for passing order by it.*— (1) An aggrieved person may make an application in respect of matters referred to in sub-section (2) of section 14 within such period as may be prescribed.

Explanation.— For the purposes of this sub-section, the expression “aggrieved person” means—

(i) any service provider who has a dispute in respect of matters referred to in clauses (i) and (ii) of sub-section (2) of section 14; 50

(ii) where any loss or damage is caused to a group of consumers, any member representing such group of consumers.

(2) On receipt of an application made under sub-section (1) the Authority may, after giving the parties an opportunity of being heard, pass such orders as it thinks fit preferably within a period of six months from the date of filing of such application and shall record reasons in writing if final order cannot be passed within the said period.

(3) While arriving at a decision, the Authority shall record in writing the reasons for such decision.

(4) Every decision of the Authority shall be published in the annual report of the Authority.

(5) The orders and directions of the Authority shall be binding on the service providers, Government and all other persons concerned.

16. *Procedure and powers of Authority.*— (1) The Authority shall be guided by the principles of natural justice.

(2) The Authority shall have, for the purpose of discharging their functions under this Chapter, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents;

(e) reviewing its decisions;

(f) dismissing an application for default or deciding it *ex parte*;

(g) setting aside any order of dismissal of any application for default or any order passed by it *ex parte*;

(h) any other matter which may be prescribed.

(3) Every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code and the Authority shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

17. *Right to legal representation.*— The applicant may either appear in person or authorise one or more legal practitioners or any of its officers to present his or its case before the Authority.

18. *Appeal to High Court.*— Any person aggrieved by any decision or order of the Authority may file an appeal to the High Court within thirty days from the date of communication of the decision or order of the Authority to him:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

19. *Orders passed by Authority or High Court to be executable as a decree.*— Every order made by the Authority under

this Act or the order made by the High Court in any appeal against any order of the Authority shall, on a certificate issued by any officer of the Authority or the Registrar of the High Court, as the case may be, be deemed to be decree of the civil court and shall be executable in the same manner as a decree of the court.

20. *Penalty for wilful failure to comply with orders of Authority or High Court.*— If any person wilfully fails to comply with the orders of the Authority or any order of the High Court, as the case may be, he shall be punishable with fine which may extend to one lakh rupees and in case of a second or subsequent offence with fine which may extend to two lakh rupees and in the case of continuing contravention with additional fine which may extend to two lakh rupees for every day during which the default continues.

CHAPTER V

Finance, Accounts and Audit

21. *Grants by Central Government.*— The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Authority grants of such sums of money as are required to pay salaries and allowances payable to the Chairperson and the members and the administrative expenses including the salaries, allowances and pension payable to or in respect of officers and other employees of the Authority.

22. *Fund.*— (1) There shall be constituted a Fund to be called the Telecom Regulatory Authority of India General Fund and then shall be credited thereto—

(a) all grants, fees and charges received by the Authority under this Act; and

(b) all sums received by the Authority from such other sources as may be decided upon by the Central Government.

(2) The Fund shall be applied for meeting—

(a) the salaries and allowances payable to the Chairperson and members and the administrative expenses including the salaries, allowances and pension payable to or in respect of officers and other employees of the Authority; and

(b) the expenses on objects and for purposes authorised by this Act.

23. *Accounts and audit.*— (1) The Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such auditor shall be payable by the Authority to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Authority shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has, in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the officers of the Authority.

(4) The accounts of the Authority as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

24. Furnishing of returns, etc., to Central Government.—

(1) The Authority shall furnish to the Central Government at such time and in such form and manner as may be prescribed or as the Central Government may direct, such returns and statements and such particulars in regard to any proposed or existing programme for the promotion and development of the telecommunication services, as the Central Government may, from time to time, require.

(2) The Authority shall prepare once every year in such form and at such time as may be prescribed, an annual report giving a summary of its activities during the previous year and copies of the report shall be forwarded to the Central Government.

(3) A copy of the report received under sub-section (2) shall be laid, as soon as may be after it is received, before each House of Parliament.

CHAPTER VI

Miscellaneous

25. Power of Central Government to issue directions.—(1) The Central Government may, from time to time, issue to the Authority such directions as it may think necessary in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality.

(2) Without prejudice to the foregoing provisions, the Authority shall, in exercise of its powers or the performance of its functions, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

Provided that the Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(3) The decision of the Central Government whether a question is one of policy or not shall be final.

26. Members, officers and employees of Authority to be public servants.— All members, officers and other employees of the Authority shall be

deemed, when acting or purporting to act in pursuance of any of the provisions of this Act to the public servants within the meaning of section 21 of 45 of 1860. the Indian Penal Code.

27. Bar of jurisdiction.— No civil court shall have jurisdiction in respect of any matter which the Authority is empowered by or under this Act to determine.

28. Protection of action taken in good faith.— No suit, prosecution or other legal proceedings shall lie against the Central Government or the Authority or any officer of the Central Government or any member, officer or other employees of the Authority for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

29. Penalty for contravention of directions of Authority.— If a person violates directions of the Authority, such person shall be punishable with fine which may extend to one lakh rupees and in the case of second or subsequent offence with fine which may extend to two lakh rupees and in the case of continuing contravention with additional fine which may extend to two lakh rupees for every day during which the default continues.

30. Offences by companies.—(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

31. Offences by Government Departments.—(1) Where an offence under this Act has been committed by any Department of Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded

against and punished accordingly unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a Department of Government and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any officer, other than the Head of the Department, such officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

32. *Exemption from tax on wealth and income.* — Notwithstanding anything contained in the Wealth-tax Act, 1957, the Income-tax Act, 1961 ^{27 of 1957.} or any other enactment for the time being in force ^{43 of 1961.} relating to tax on wealth, income, profits or gain, the Authority shall not be liable to pay wealth-tax, income-tax or any other tax in respect of their wealth, income, profits or gains derived.

33. *Delegation.* — The Authority may, by general or special order in writing, delegate to any member, officer of the Authority or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the power to settle dispute under Chapter IV and to make regulation under section 36) as it may deem necessary.

34. *Cognizance of offences.* — (1) No court shall take cognizance of any offence punishable under this Act or the rules or regulations made thereunder, save on a complaint made by the Authority.

(2) No court inferior to that of a Chief Metropolitan Magistrate or a Chief Judicial Magistrate of first class shall try any offence punishable under this Act.

35. *Power to make rules.* — (1) The Central Government may, by notification, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the salary and allowances payable to and the other conditions of service of the Chairperson and members under sub-section (5) of section 5;

(b) the powers and functions of the Chairperson under sub-section (1) of section 6;

(c) the procedure for conducting an inquiry made under sub-section (2) of section 7;

(d) the category of books of account or other documents which are required to be maintained under sub-section (3) of section 12;

(e) the period within which an application is to be made under sub-section (1) of section 15;

(f) the manner in which the accounts of the Authority shall be maintained under sub-section (1) of section 23;

(g) the time within which and the form and manner in which returns and report are to be made to the Central Government under sub-sections (1) and (2) of section 24;

(h) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

36. *Power to make regulations.* — (1) The Authority may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the times and places of meetings of the Authority and the procedure to be followed at such meetings under sub-section (1) of section 8, including quorum necessary for the transaction of business;

(b) the transaction of business at the meetings of the Authority under sub-section (4) of section 8;

(c) the salaries and allowances payable to and the other conditions of service of officers and other employees of the Authority under sub-section (2) of section 10;

(d) matters in respect of which register is to be maintained by the Authority under clause (1) of sub-section (1) of section 11;

(e) levy of fee and lay down such other requirements on fulfilment of which a copy of register may be obtained under clause (m) of sub-section (1) of section 11;

(f) levy of fees and other charges under clause (p) of sub-section (1) of section 11.

37. *Rules and regulations to be laid before Parliament.* — Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

38. *Application of certain laws.* — The provisions of this Act shall be in addition to the provisions of the Indian Telegraph Act, 1885 and the ^{13 of 1885.} Indian Wireless Telegraphy Act, 1933 and, in particular, nothing in this Act shall affect any jurisdiction, powers and functions required to be exercised or performed by the Telegraph Authority in relation to any area falling within the jurisdiction of such Authority. ^{17 of 1933.}

39. *Power to remove difficulties.* — (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

40. *Repeal and saving.* — (1) The Telecom Ord. Regulatory Authority of India Ordinance 1997 is 11 of 1997. hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

Notification

10/5/96/LA-Vol. II

The Reserve Bank of India (Amendment) Act, 1997 (Central Act 23 of 1997), which has been passed by Parliament and assented to by the President of India on 28th March, 1997 and published in the Gazette of India, Extraordinary, Part II, Section I dated 29th March, 1997 is hereby published for the general information of the public.

P. V. Kadnekar, Joint Secretary (Law).

Panaji, 24th September, 1997.

THE RESERVE BANK OF INDIA (AMENDMENT) ACT, 1997

AN

ACT

further to amend the Reserve Bank of India Act, 1934.

Be it enacted by Parliament in the Forty-eighth Year of the Republic of India as follows:—

1. *Short title and commencement.*— (1) This Act may be called the Reserve Bank of India (Amendment) Act, 1997.

(2) The provisions of this Act, other than section 9, shall be deemed to have come into force on the 9th day of January, 1997, and section 9 shall come into force on the 1st day of April, 1997.

2. *Amendment of section 45-I.*— In section 45-I of the Reserve Bank of India Act, 1934 (hereinafter referred to as the principal Act),—

(1) clause (a) shall be renumbered as clause (aa) and before clause (aa) as so renumbered, the following clause shall be inserted, namely:—

'(a) "business of a non-banking financial institution" means carrying on of the business of a financial institution referred to in clause (c) and includes business of a non-banking financial company referred to in clause (f);'

(2) in clause (c),—

(i) for the portion beginning with the words "but does not include any institution, which,—" and ending with the brackets, letter and words "(a) agricultural operations; or", the following shall be substituted, namely:—

"but does not include any institution, which carries on as its principal business,—

(a) agricultural operations; or

(aa) industrial activity; or";

(ii) the following *Explanation* shall be inserted at the end, namely:—

'Explanation.— For the purposes of this clause, "industrial activity" means any activity specified in sub-clauses (i) to (xviii) of clause (c) of section 2 of the Industrial Development Bank of India Act, 1964;'

18 of 1964.

(3) after clause (e), the following clause shall be inserted, namely:—

'(f) "non-banking financial company" means —

(i) a financial institution which is a company;

(ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner;

(iii) such other non-banking institution or class of such institutions, as the Bank May, with the previous approval of the Central Government and by notification in the Official Gazette, specify.'

3. *Insertion of new sections 45-IA, 45-IB and 45-IC.* — After section 45-I of the principal Act, the following sections shall be inserted, namely:—

"45-IA. *Requirement of registration and net owned fund.*— (1) Notwithstanding anything contained in this

Chapter or in any other law for the time being in force, no non-banking financial company shall commence or carry on the business of a non-banking financial institution without —

(a) obtaining a certificate of registration issued under this Chapter, and

(b) having the net owned fund of twenty-five lakh rupees or such other amount, not exceeding two hundred lakh rupees, as the Bank may, by notification in the Official Gazette, specify.

(2) Every non-banking financial company shall make an application for registration to the Bank in such form as the Bank may specify:

Provided that a non-banking financial company in existence on the commencement of the Reserve Bank of India (Amendment) Act, 1997 shall make an application for registration to the Bank before the expiry of six months from such commencement and notwithstanding anything contained in sub-section (1) may continue to carry on the business of a non-banking financial institution until a certificate of registration is issued to it or rejection of application for registration is communicated to it.

(3) Notwithstanding anything contained in sub-section (1), a non-banking financial company in existence on the commencement of the Reserve Bank of India (Amendment) Act, 1997 and having a net owned fund of less than twenty-five lakh rupees may, for the purpose of enabling such company to fulfil the requirement of the net owned fund, continue to carry on the business of a non-banking financial institution—

(i) for a period of three years from such commencement; or

(ii) for such further period as the Bank may, after recording the reasons in writing for so doing, extend,

subject to the condition that such company shall, within three months of fulfilling the requirement of the net owned fund, inform the Bank about such fulfilment:

Provided that the period allowed to continue business under this sub-section shall in no case exceed six years in the aggregate.

(4) The Bank may, for the purpose of considering the application for registration, require to be satisfied by an inspection of the books of the non-banking financial company or otherwise that the following conditions are fulfilled:—

(a) that the non-banking financial company is or shall be in a position to pay its present or future depositors in full as and when their claims accrue;

(b) that the affairs of the non-banking financial company are not being or are not likely to be conducted in a manner detrimental to the interest of its present or future depositors;

(c) that the general character of the management or the proposed management of the non-banking financial company shall not be prejudicial to the public interest or the interest of its depositors;

(d) that the non-banking financial company has adequate capital structure and earning prospects;

(e) that the public interest shall be served by the grant of certificate of registration to the non-banking financial company to commence or to carry on the business in India;

(f) that the grant of certificate of registration shall not be prejudicial to the operation and consolidation of the financial sector consistent with monetary stability, economic growth and considering such other relevant factors which the Bank may, by notification in the Official Gazette, specify; and

(g) any other condition, fulfilment of which in the opinion of the Bank, shall be necessary to ensure that the commencement of or carrying on of the business in India by a non-banking financial company shall not be prejudicial to the public interest or in the interest of the depositors.

(5) The Bank may, after being satisfied that the conditions specified in sub-section (4) are fulfilled, grant a certificate of registration subject to such conditions which it may consider fit to impose.

(6) The Bank may cancel a certificate of registration granted to a non-banking financial company under this section if such company—

(i) ceases to carry on the business of a non-banking financial institution in India; or

(ii) has failed to comply with any condition subject to which the certificate of registration had been issued to it; or

(iii) at any time fails to fulfil any of the conditions referred to in clauses (a) to (g) of sub-section (4); or

(iv) fails—

(a) to comply with any direction issued by the Bank under the provisions of this Chapter; or

(b) to maintain accounts in accordance with the requirements of any law or any direction or order issued by the Bank under the provisions of this Chapter; or

(c) to submit or offer for inspection its books of account and other relevant documents when so demanded by an inspecting authority of the Bank; or

(v) has been prohibited from accepting deposit by an order made by the Bank under the provisions of this Chapter and such order has been in force for a period of not less than three months;

Provided that before cancelling a certificate of registration on the ground that the non-banking financial company has failed to comply with the provisions of clause (ii) or has failed to fulfil any of the conditions referred to in clause (iii) the Bank, unless it is of the opinion that the delay in cancelling the certificate of registration shall be prejudicial to public interest

or the interest of the depositors or the non-banking financial company, shall give an opportunity to such company on such terms as the Bank may specify for taking necessary steps to comply with such provision or fulfilment of such condition:

Provided further that before making any order of cancellation of certificate of registration, such company shall be given a reasonable opportunity of being heard.

(7) A company aggrieved by the order of rejection of a application for registration or cancellation of certificate of registration may prefer an appeal, within a period of thirty days from the date on which such order of rejection or cancellation is communicated to it, to the Central Government and the decision of the Central Government where an appeal has been preferred to it, or of the Bank where no appeal has been preferred, shall be final:

Provided that before making any order of rejection of appeal, such company shall be given a reasonable opportunity of being heard.

Explanation — For the purposes of this section,—

(I) "net owned fund" means—

(a) the aggregate of the paid-up equity capital and free reserves as disclosed in the latest balance-sheet of the company after deducting therefrom—

(i) accumulated balance of loss;

(ii) deferred revenue expenditure; and

(iii) other intangible assets; and

(b) further reduced by the amounts representing —

(I) investments of such company in shares of

(i) its subsidiaries;

(ii) companies in the same group;

(iii) all other non-banking financial companies, and

(2) the book value of debentures, bonds, outstanding loans and advances (including hire-purchase and lease finance) made to, and deposits with,—

(i) subsidiaries of such company; and

(ii) companies in the same group,

to the extent such amount exceeds ten per cent. of (a) above.

(II) "subsidiaries" and "companies in the same group" shall have the same meanings assigned to them in the Companies Act, 1956. 1 of 1956

45-IB. *Maintenance of percentage of assets.*— (1) Every non-banking financial company shall invest and continue to invest in India in unencumbered approved securities, valued at a price not exceeding the current market price of such securities, an amount which, at the close of business on any day, shall not be less than five per cent. or such higher percentage not exceeding twenty-five per cent. as the Bank may, from time to time and by notification in the Official Gazette, specify, of the deposits outstanding at the close of business on the last working day of the second preceding quarter:

Provided that the Bank may specify different percentages of investment in respect of different classes of non-banking financial companies.

(2) For the purpose of ensuring compliance with the provisions of this section, the Bank may require every non-banking financial company to furnish a return to it in such form, in such manner and for such period as may be specified by the Bank.

(3) If the amount invested by a non-banking financial company at the close of business on any day falls below the rate specified under sub-section (1), such company shall be liable to pay to the Bank, in respect of such shortfall, a penal interest at a rate of three per cent. per annum above the bank rate on such amount by which the amount actually invested falls short of the specified percentage, and where the shortfall continues in the subsequent quarters, the rate of penal interest shall be five per cent. per annum above the bank rate on such shortfall for each subsequent quarter.

(4) (a) The penal interest payable under sub-section (3) shall be payable within a period of fourteen days from the date on which a notice issued by the Bank demanding payment of the same is served on the non-banking financial company and, in the event of a failure of the non-banking financial company to pay the same within such period, penalty may be levied by a direction of the principal civil court having jurisdiction in the area where an offence of the defaulting non-banking financial company is situated and such direction shall be made only upon an application made in this behalf to the court by the Bank; and

(b) when the court makes a direction under clause (a), it shall issue a certificate specifying the sum payable by the non-banking financial company and every such certificate shall be enforceable in the same manner as if it were a decree made by the court in a suit.

(5) Notwithstanding anything contained in this section, if the Bank is satisfied that the defaulting non-banking financial company had sufficient cause for its failure to comply with the provisions of sub-section (1), it may not demand the payment of the penal interest.

Explanation.—for the purposes of this section,—

(i) "approved securities" means securities of any State Government or of the Central Government and such bonds, both the principal whereof and the interest whereon shall have been fully and unconditionally guaranteed by any such Government;

(ii) "unencumbered approved securities" includes the approved securities lodged by the non-banking financial company with another institution for an advance or any other arrangement to the extent to which such securities have not been drawn against or awaited of or encumbered in any manner;

(iii) "quarter" means the period of three months ending on the last day of March, June, September or December.

45-IC Reserve fund.— (1) Every non-banking financial company shall create a reserve fund and transfer therein a sum not less than twenty per cent. of its net profit every year as disclosed in the profit and loss account and before any dividend is declared.

(2) No appropriation of any sum from the reserve fund shall be made by the non-banking financial company except for the purpose as may be specified by the Bank from time to time and every such appropriation shall be reported to the Bank within twenty-one days from the date of such withdrawal:

Provided that the Bank may, in any particular case and for sufficient cause being shown, extend the period of twenty-one days by such further period as it thinks fit or condone any delay in making such report.

(3) Notwithstanding anything contained in sub-section (1), the Central Government may, on the recommendation of the Bank and having regard to the adequacy of the paid-up capital and reserves of a non-banking financial company in relation to its deposit liabilities, declare by order in writing that the provisions of sub-section (1) shall not be applicable to the non-banking financial company for such period as may be specified in the order:

Provided that no such order shall be made unless the amount in the reserve fund under sub-section (1) together with the amount in the share premium account is not less than the paid-up capital of the non-banking financial company.

4. Insertion of new section 45JA.— After section 45J of the principal Act, the following section shall be inserted, namely:—

"45JA. Power of Bank to determine policy and issue directions.— (1) If the Bank is satisfied that, in the public interest or to regulate the financial system of the country to its advantage or to prevent the affairs of any non-banking financial company being conducted in a manner detrimental to the interest of the depositors or in a manner prejudicial to the interest of the non-banking financial company, it is necessary or expedient so to do, it may determine the policy and give directions to all or any of the non-banking financial companies relating to income recognition, accounting standards, making of proper provision for bad and doubtful debts, capital adequacy based on risk weights for assets and credit conversion factors for off balance-sheet items and also relating to deployment of funds by a non-banking financial company or a class of non-banking financial companies or non-banking financial companies generally, as the case may be, and such non-banking financial companies shall be bound to follow the policy so determined and the directions so issued.

(2) Without prejudice to the generality of the powers vested under sub-section (1), the Bank may give directions to

non-banking financial companies generally or to a class of non-banking financial companies or to any non-banking financial company in particular as to—

(a) the purpose for which advances or other fund based or non-fund based accommodation may not be made; and

(b) the maximum amount of advances or other financial accommodation or investment in shares and other securities which, having regard to the paid-up capital, reserves and deposits of the non-banking financial company and other relevant considerations, may be made by that non-banking financial company to any person or a company or to a group of companies."

5. Amendment of section 45MA.— In section 45MA of the principal Act, —

(i) after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) The Bank may, on being satisfied that it is necessary so to do, in the public interest or in the interest of the depositors or for the purpose of proper assessment of the books of account, issue directions to any non-banking financial company or any class of non-banking financial companies or non-banking financial companies generally or to the auditors of such non-banking financial company or companies relating to balance-sheet, profit and loss account, disclosure of liabilities in the books of account or any matter relating thereto."

(ii) in sub-section (2), for the words "a non-banking institution, being a company", the words "a non-banking financial company" shall be substituted;

(iii) after sub-section (2), the following sub-sections shall be inserted, namely:—

"(3) Where the Bank is of the opinion that it is necessary so to do in the public interest or in the interest of the non-banking financial company or in the interest of the depositors of such company, it may at any time by order direct that a special audit of the accounts of the non-banking financial company in relation to any such transaction or class of transactions or for such period or periods, as may be specified in the order, shall be conducted and the Bank may appoint an auditor or auditors to conduct such special audit and direct the auditor or the auditors to submit the report to it.

(4) The remuneration of the auditors as may be fixed by the Bank, having regard to the nature and volume of work involved in the audit and the expenses of or incidental to the audit, shall be borne by the non-banking financial company so audited."

6. Insertion of new sections 45MB and 45MC.— After section 45MA of the principal Act, the following sections shall be inserted, namely:—

"45MB. Power of Bank to prohibit acceptance of deposit and alienation of assets.— (1) If any non-banking financial

company violates the provisions of any section or fails to comply with any direction or order given by the Bank under any of the provisions of this Chapter, the Bank may prohibit the non-banking financial company from accepting any deposit.

(2) Notwithstanding anything to the contrary contained in any agreement or instrument or any law for the time being in force, the Bank, on being satisfied that it is necessary so to do in the public interest or in the interest of the depositors, may direct, the non-banking financial company against which an order prohibiting from accepting deposit has been issued, not to sell, transfer, create charge or mortgage or deal in any manner with its property and assets without prior written permission of the Bank for such period not exceeding six months from the date of the order.

45MC. Power of Bank to file winding up petition.— (1) The Bank, on being satisfied that a non-banking financial company,—

- (a) is unable to pay its debt; or
- (b) has by virtue of the provisions of section 45-IA become disqualified to carry on the business of a non-banking financial institution; or
- (c) has been prohibited by the Bank from receiving deposit by an order and such order has been in force for a period of not less than three months; or
- (d) the continuance of the non-banking financial company is detrimental to the public interest or to the interest of the depositors of the company,

may file an application for winding up of such non-banking financial company under the Companies Act, 1 of 1956, 1956.

(2) A non-banking financial company shall be deemed to be unable to pay its debt if it has refused or has failed to meet within five working days any lawful demand made at any of its offices or branches and the Bank certifies in writing that such company is unable to pay its debt.

(3) A copy of every application made by the Bank under sub-section (1) shall be sent to the Registrar of Companies.

(4) All the provisions of the Companies Act, 1956 1 of 1956 relating to winding up of a company shall apply to a winding up proceeding initiated on the application made by the Bank under this provision.”

7. Insertion of new sections 45NB and 45NC.— After section 45NA of the principal Act, the following sections shall be inserted, namely:—

“45NB. *Disclosure of information.*— (1) Any information relating to a non-banking financial company,—

- (i) contained in any statement or return submitted by such company under the provisions of this Chapter; or

- (ii) obtained through audit or inspection or otherwise by the Bank,

shall be treated as confidential and shall not, except otherwise provided in this section, be disclosed.

(2) Nothing in this section shall apply to—

(a) the disclosure by any non-banking financial company, with the previous permission of the Bank, of any information furnished to the Bank under sub-section (1);

(b) the publication by the Bank, if it considers necessary in the public interest so to do, of any information collected by it under sub-section (1) in such consolidated form as it may think fit without disclosing the name of any non-banking financial company or its borrowers;

(c) the disclosure or publication by the non-banking financial company or by the Bank of any such information to any other non-banking financial company or in accordance with the practice and usage customary amongst such companies or as permitted or required under any other law:

Provided that any such information received by a non-banking financial company under this clause shall not be published except in accordance with the practice and usage customary amongst companies or as permitted or required under any other law.

(3) Notwithstanding anything contained in this Act or in any other law for the time being in force, the Bank, if it is satisfied that, in the public interest or in the interest of the depositors or the non-banking financial company or to prevent the affairs of any non-banking financial company being conducted in a manner detrimental to the interest of the depositors, it is expedient so to do, may, either on its own motion or on being requested, furnish or communicate any information relating to the conduct of business by any non-banking financial company to any authority constituted under any law.

(4) Notwithstanding anything contained in any law for the time being in force, no court or tribunal or other authority shall compel the Bank to produce or to give inspection of any statement or other material obtained by the Bank under any provisions of this Chapter.

45NC. Power of Bank to exempt.— The Bank, on being satisfied that it is necessary so to do, may declare by notification in the Official Gazette that any or all of the provisions of this Chapter shall not apply to a non-banking institution or a class of non-banking institutions or a non-banking financial company or to any class or non-banking financial companies either generally or for such period as may be specified, subject to such conditions, limitations or restrictions as it may think fit to impose.”

8. Insertion of new sections 45QA and 45QB.— After section 45Q of the principal Act, the following sections shall be inserted, namely:—

“45QA. *Power of Company Law Board to order repayment of deposit.*— (1) Every deposit accepted by a non-banking financial company, unless renewed, shall be repaid in accordance with the terms and conditions of such deposit.

(2) Where a non-banking financial company has failed to repay any deposit or part thereof in accordance with the terms and conditions of such deposit, the Company Law Board constituted under section 10E of the Companies Act, 1956 may, if it is satisfied, either on its own motion or on an application of the depositor, that it is necessary so to do to safeguard the interests of the company, the depositors or in the public interest, direct, by order, the non-banking financial company to make repayment of such deposit or part thereof forthwith or within such time and subject to such conditions as may specified in the order.

Provided that the Company Law Board may, before making any order under this sub-section, give a reasonable opportunity of being heard to the non-banking financial company and the other persons interested in the matter.

45QB. Nomination by depositors.— (1) Where a deposit is held by a non-banking institution to the credit of one or more persons, the depositor or, as the case may be, all the depositors together may nominate, in the manner prescribed by rules made by the Central Government under section 45ZA of the Banking Regulation Act, 1949, one person to whom in the event of the death of the sole depositor or the death of the depositors, the amount of deposit may be returned by the non-banking institution.

(2) Notwithstanding anything contained in any other law for the time being in force, or in any disposition, whether testamentary or otherwise, in respect of such deposit, where a nomination made purports to confer on any person the right to receive the amount of deposit from the non-banking institution, the nominee shall, on the death of the sole depositor or, as the case may be, on the death of all the depositors, become entitled to all the rights of the sole depositor or, as the case may be, of the depositors, in relation to such deposit to the exclusion of all other persons unless the nomination is varied or cancelled in the manner prescribed by rules made by the Central Government under section 45ZA of the Banking Regulation Act, 1949.

(3) Where the nominee is a minor, it shall be lawful for the depositor making the nomination to appoint in the manner prescribed by rules made by the Central Government under section 45ZA of the Banking Regulation Act, 1949, any person to receive the amount of deposit in the event of his death during the minority of the nominee.

(4) Payment by a non-banking institution in accordance with the provisions of this section shall constitute a full discharge to the non-banking institution of its liability in respect of the deposit:

Provided that nothing contained in this sub-section shall affect the right or claim which any person may have against the person to whom any payment is made under this section.

(5) No notice of the claim of any person, other than the person or persons in whose name a deposit is held by a

non-banking institution, shall be receivable by the non-banking institution, nor shall the non-banking institution be bound by any such notice even though expressly given to it:

Provided that where any decree, order, certificate or other authority from a court of competent jurisdiction relating to such deposit if produced before a non-banking institution, the non-banking institution shall take due note of such decree, order, certificate or other authority."

9. Substitution of new section for section 45S.— For section 45S of the principal Act, the following section shall be substituted, namely:—

"45S. Deposits not to be accepted in certain cases.— (1) No person, being an individual or a firm or an unincorporated association of individuals shall, accept any deposit—

(i) if his or its business wholly or partly includes any of the activities specified in clause (c) of section 45-I; or

(ii) if his or its principal business is that of receiving of deposits under any scheme or arrangement or in any other manner, or lending in any manner:

Provided that nothing contained in this sub-section shall apply to the receipt of money by an individual by way of loan from any of his relatives or to the receipt of money by a firm by way of loan from the relative or relatives of any of the partners.

(2) Where any person referred to in sub-section (1) holds any deposit on the 1st day of April, 1997 which is not in accordance with sub-section (1), such deposit shall be repaid by that person immediately after such deposit becomes due for repayment or within three years from the date of such commencement, whichever is earlier:

Provided that if the Bank is satisfied on an application made by any person to the Bank that such person is unable to repay a part of the deposits for reasons beyond his control or such repayment shall cause extreme hardship to him, it may, by an order in writing, extend such period by a period not exceeding one year subject to such conditions as may be specified in the order.

(3) On and from the 1st day of April, 1997, no person referred to in sub-section (1) shall issue or cause to be issued any advertisement in any form for soliciting deposit.

Explanation.— For the purposes of this section, a person shall be deemed to be a relatives of another if, and only if,—

(i) they are members of a Hindu undivided family; or

(ii) they are husband and wife; or

(iii) the one is related to the other in the manner indicated in the List of Relatives below.—

List of Relatives

1. Father, 2. Mother, (including step-mother), 3. Son (including step-son), 4. Son's wife, 5. Daughter (including step-daughter), 6. Father's father, 7. Father's mother, 8. Mother's mother, 9. Mother's father, 10.

Son's son, 11. Son's son's wife, 12. Son's daughter, 13. Son's daughter's husband, 14. Daughter's husband, 15. Daughter's son, 16. Daughter's Son's wife, 17. Daughter's daughter, 18. Daughter's daughter's husband, 19. Brother (including step-brother), 20. Brother's wife, 21. Sister (including step-sister), 22. Sister's husband."

10. *Amendment of section 58B.*— In section 58B of the principal Act,—

(a) after sub-section (4), the following sub-sections shall be inserted, namely;—

"(4A) If any person contravenes the provisions of sub-section (1) of section 45-IA, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to five years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees."

(4AA) If any auditor fails to comply with any direction given or order made by the Bank under section 45MA, he shall be punishable with fine which may extend to five thousand rupees.

(4AAA) Whoever fails to comply with any order made by the Company Law Board under sub-section (2) of section 45QA, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to a fine of not less than rupees fifty for every day during which such non-compliance continues."

(b) in sub-section (5),—

(i) after the words "If any person", the expression "other than an auditor" shall be inserted;

(ii) after clause (a), the following clause shall be inserted, namely:—

"(aa) fails to comply with any direction given or order made by the Bank under any of the provisions of Chapter III-B; or".

11. *Insertion of new section 58G.*— After section 58F of the principal Act, the following section shall be inserted, namely:—

"58G. *Power of Bank to impose fine.*— (1) Notwithstanding anything contained in section 58B, if the contravention or default of the nature referred to in section 58B is committed by a non-banking financial company, the Bank may impose on such non-banking financial company—

(a) a penalty not exceeding five thousand rupees ; or

(b) where the contravention or default is under sub-section (4A) or clause (a) or clause (aa) of sub-section (5) of section 58B, a penalty not exceeding five lakh rupees or twice the amount involved in such contravention or default, where the amount is quantifiable, whichever is more; and where such contravention or default

is a continuing one, further penalty which may extend to twenty-five thousand rupees for every day, after the first, during which the contravention or default continues.

(2) For the purpose of imposing penalty under sub-section (1), the Bank shall serve a notice on the non-banking financial company requiring it to show cause why the amount specified in the notice should not be imposed as a penalty and a reasonable opportunity of being heard shall also be given to such non-banking financial company.

(3) Any penalty imposed by the Bank under this section shall be payable within a period of thirty days from the date on which notice is issued by the Bank demanding payment of the sum is served on the non-banking financial company and, in the event of failure of the non-banking financial company to pay the sum within such period, may be levied on a direction made by the principal civil court having jurisdiction in the area where the registered office or the head office of the non-banking financial company is situated:

Provided that no such direction shall be made, except on an application made by an officer of the Bank authorised in this behalf, to by the principal civil court.

(4) The court which makes a direction under sub-section (3), shall issue a certificate specifying the sum payable by the non-banking financial company and every such certificate shall be enforceable in the same manner as if it were a decree made by the court in a civil suit.

(5) No complaint shall be filed against any non-banking financial company in any court of law pertaining to any contravention or default in respect of which any penalty has been imposed by the Bank under this section.

(6) Where any complaint has been filed against a non-banking financial company in a court in respect of contravention or default of the nature referred to in section 58B, no proceedings for imposition of penalty against that non-banking financial company shall be taken under this section. "

12. *Amendment of the First Schedule.*— In the First Schedule to the principal Act, for items 1 and 2, the following items shall be substituted, namely:—

"1. The Western Area shall consist of the States of Goa, Gujarat, Madhya Pradesh and Maharashtra and the Union Territories of Dadar and Nagar Haveli and Daman and Diu.

2. The Eastern Area shall consist of the States of Arunachal Pradesh, Assam, Bihar, Manipur, Meghalaya, Mizoram, Nagaland, Orissa, Sikkim, Tripura and West Bengal and the Union Territories of Andaman and Nicobar Islands."

13. *Repeal and saving.*— (1) The Reserve Bank of India (Amendment) Ordinance, 1997 is hereby repealed.

(2) Notwithstanding the repeal of the Reserve Bank of India (Amendment) Ordinance, 1997, anything done or any action

taken under the principal Act as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act as amended by this Act.

Notification

10/5/96/LA-Vol. II

The Special Court (Trial of Offences Relating to Transactions in Securities) Amendment Act, 1997 (Central Act 6 of 1997), which has been passed by Parliament and assented to by President of India on 19th March, 1997 and published in the Gazette of India, Extraordinary, Part II, Section I dated 19th March, 1997 is hereby published for the general information of the public.

P. V. Kadneker, Joint Secretary (Law).

Panaji, 3rd October, 1997.

THE SPECIAL COURT (TRIAL OF OFFENCES RELATING TO TRANSACTIONS IN SECURITIES) AMENDMENT ACT 1997

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ACT

further to amend the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992.

Be it enacted by Parliament in the Forty-eighth Year of the Republic of India as follows:—

1. *Short title and commencement.* — (1) This Act may be called the Special Court (Trial of Offences Relating to Transactions in Securities) Amendment Act, 1997.

(2) It shall be deemed to have come into force on the 16th day of January, 1997.

2. *Amendment of section 5* — In section 5 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (hereinafter referred to as the principal Act),—

27 of
1992.

(a) in sub-section (2), for the words “a sitting Judge”, the words “one or more sitting Judges” shall be substituted;

(b) in sub-section (3), for the words “the judge of the Special Court”, at both the places where they occur, the words “a Judge of the Special Court” shall be substituted.

3. *Insertion of new section 5A.*— After section 5 of the principal Act, the following section shall be inserted, namely:—

“5A. *Distribution of cases amongst Judges of Special Court.*— Where the Special Court consists of two or more Judges, the Chief Justice of the High Court within the local limits of whose jurisdiction the Special Court is situated may, from time to time, by general or special order, make provisions as to the distribution of case amongst the judges and specify the matters which may be dealt with by each such judge.”.

4. *Repeal and saving.* — (1) The Special Court (Trial of Offences Relating to Transactions in Securities) Amendment Ordinance, 1997 is hereby repealed.

Ord.
6 of 1997.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Act.